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**Pro hac vice* admittance to be sought

Counsel for Plaintiff and the Putative Class

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

AMELIA FOOS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ANN, INC, d/b/a AnnTaylor Retail, Inc., a
Delaware corporation,

Defendant.

Case No. **'11CV2794 L MDD**

CLASS ACTION COMPLAINT FOR:

Violation of Cal. Civ. Code § 1747.08

CLASS ACTION COMPLAINT

Plaintiff Amelia Foos ("Plaintiff") brings this Class Action Complaint against Defendant Ann, Inc. d/b/a AnnTaylor Retail, Inc. ("Defendant" or "Ann Taylor") to put a stop to Ann Taylor's unlawful practice of requiring and recording private consumer information in violation of the Song-Beverly Credit Card Act of 1971, California Civil Code § 1747.08 (the "Song-

1 Beverly Credit Card Act” or the “Act”). Plaintiff, on behalf of herself and all others similarly
2 situated, complains and alleges upon personal knowledge as to herself and her own acts and
3 experiences, and, as to all other matters, upon information and belief, including investigation
4 conducted by her attorneys:

5
6 **I. NATURE OF THE ACTION**

7 1. In 1971, the California legislature passed the Song-Beverly Credit Card Act (the
8 “Act”) to protect California consumers from, among other things, unfair business practices,
9 including specifically unfair business practices in connection with the usage and billing of credit
10 cards.

11 2. In 1990, California Civil Code section 1747.08 was added to the Act to address
12 and prevent the misuse and improper collection of personal identification information, such as
13 billing addresses, for such purposes as marketing and advertising, among others. In adding
14 Section 1747.08 to the Act, the California legislature found that there was no legitimate need to
15 obtain such personal information from credit card customers, other than what was necessary to
16 complete the transaction.

17 3. Specifically, California Civil Code section 1747.08 states that retail merchants
18 who accept credit card payments during the course of business transactions cannot:
19

20 (1) request, or require as a condition to accepting the credit card as
21 payment in full or in part for goods or services, the cardholder to
22 write any personal identification information upon the credit card
23 transaction form or otherwise, [or]

24 (2) request, or require as a condition to accepting the credit card as
25 payment in full or in part for goods or services, the cardholder to
26 provide personal identification information, which the person,
27 firm, partnership, association, or corporation accepting the credit
28 card writes, causes to be written, or otherwise records upon the
credit card transaction form or otherwise.

1 4. California Civil Code 1747.08(b) defines personal identification information as
2 “information concerning the cardholder, other than information set forth on the credit card, and
3 including, but not limited to, the cardholder’s address and telephone number.” (§ 747.08, subd.
4 (b).)

5 5. Defendant Ann Taylor is a large retail outlet with at least 896 store locations
6 throughout the country, including a number of stores in California.

7 6. This action arises from Ann Taylor’s violation of California Civil Code Section
8 1747.08 through its practice of requiring, as a condition of using a credit card to make a
9 purchase, Plaintiff’s and the Class members’ personal identification information, specifically
10 their ZIP codes.
11

12 **II. JURISDICTION AND VENUE**

13 7. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). In the
14 aggregate, Plaintiff’s claims and the claims of the other members of the Class exceed \$5,000,000
15 exclusive of interest and costs, and there are numerous class members who are citizens of states
16 other than Ann Taylor’s respective states of citizenship.
17

18 8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1), (2) and
19 1391(c) as: Ann Taylor is deemed to reside in this District because it is subject to personal
20 jurisdiction here; a substantial part of the events and/or omissions giving rise to the claims
21 emanated from activities within this District; and Ann Taylor conducts substantial business in
22 this District.
23

24 **III. PARTIES**

25 9. Plaintiff is a natural person and citizen of the state of California.

26 10. Ann Taylor is a corporation incorporated and existing under the laws of the state
27 of Delaware with its headquarters located at 7 Times Square, 15th Floor, city of
28

1 New York, State of New York. Defendant conducts business throughout the United States and
2 California.

3 **IV. FACTUAL BACKGROUND**

4 11. On November 15, 2010, Plaintiff shopped and purchased items at an Ann Taylor
5 retail store location in San Francisco, California.

6 12. To consummate each purchase, Plaintiff elected to use, and did use, her credit
7 card as her form of payment.

8 13. As a condition of using her credit card, Plaintiff was required by Ann Taylor to
9 enter personal identification information associated with the credit card, including her full and
10 complete ZIP code. Ann Taylor would not allow Plaintiff to complete her purchase without
11 supplying such information.
12

13 14. Ann Taylor recorded, stored, and continues to store Plaintiff's personal
14 identification information, including Plaintiff's name, zip code, and credit card number, in its
15 databases.
16

17 **V. CLASS ACTION ALLEGATIONS**

18 15. Plaintiff brings this action, on behalf of herself and as a class action, pursuant to
19 the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf
20 of a class defined as:

21 All persons from whom Ann Taylor requested and recorded
22 personal identification information in conjunction with a credit
23 card transaction occurring in California.

24 Excluded from the Class are Ann Taylor and its subsidiaries and affiliates; all persons who make
25 a timely election to be excluded from the Class; governmental entities; and the judge to whom
26 this case is assigned and any immediate family thereof.
27
28

1 16. Certification of Plaintiff's claims for class-wide treatment is appropriate because
2 Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as
3 would be used to prove those elements in individual actions alleging the same claims.

4 17. **Numerosity — Federal Rule of Civil Procedure 23(a)(1).** The exact number of
5 the members of the Class is unknown and is not available to Plaintiff at this time, but individual
6 joinder in this case is impracticable. The Class consists of millions of individuals. Class members
7 can be easily identified through Defendant's records and public records.
8

9 18. **Commonality and Predominance — Federal Rule of Civil Procedure 23(a)(2)**
10 **and 23(b)(3).** Common questions of law and fact exist as to all members of the Class and
11 predominate over any questions affecting only individual members. Among the questions of law
12 and fact common to the Class are:

13 (a) Whether each Class member engaged in a credit card transaction with
14 Defendant;

15 (b) Whether Defendant required Class members to provide personal
16 identification information during such credit card transactions;

17 (c) Whether Defendant recorded Class members' personal identification
18 information in its databases;

19 (d) Whether Defendant's conduct and practice of requiring and recording
20 such personal identification information during credit card transactions
21 constitutes a violation of California Civil Code section 1747.08; and
22

23 (e) The proper measure of civil penalties.
24

25 19. **Typicality — Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are
26 typical of the claims of the other members of the class. Plaintiff, like every other Class member,
27
28

1 was exposed to virtually identical conduct by the Defendant, and is entitled to civil penalties of
2 up to one thousand dollars (\$1,000) per violation pursuant to California Civil Code section
3 1747.08(e).

4 **20. Adequate Representation — Federal Rule of Civil Procedure 23(a)(4).**
5 Plaintiff will fairly and adequately represent and protect the interest of the Class, and has
6 retained counsel competent and experienced in complex litigation and class actions. Plaintiff has
7 no interest antagonistic to that of the Class, and Defendant has no defenses unique to the
8 Plaintiff.
9

10 **21. Superiority — Federal Rule of Civil Procedure 23(b)(3):** This class action is
11 appropriate for certification because class proceedings are superior to all other available methods
12 for the fair and efficient adjudication of this controversy and joinder of all members of the Class
13 is impracticable. The recovery to which individual members of the Class are entitled will likely
14 be small relative to the burden and expense of individual prosecution of the complex litigation
15 necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the
16 individual members of the Class to obtain effective relief for Defendant's misconduct. Even if
17 each member of the Class could sustain such individual litigation, it would not be preferable to a
18 class action because individual litigation would increase the delay and expenses to all parties due
19 to the complex legal and factual controversies presented in this Complaint. By contrast, a class
20 action presents far fewer management difficulties and provides the benefits of single
21 adjudication, economy of scale, and comprehensive supervision by a single court. Economies of
22 time, effort, and expense will be fostered and uniformity of decisions will be ensured.
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25 **22.** Plaintiff reserves the right to revise the Class definition based on information
26 learned through discovery.
27
28

VI. CLAIMS ALLEGED

COUNT I

**Violation of Cal. Civ. Code § 1747.08
("Song-Beverly Credit Card Act of 1971")
(On behalf of Plaintiff and the Class)**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

24. California Civil Code section 1747.08 prohibits any corporation, which accepts credit cards during business transactions, from requesting or requiring personal identification information from cardholders and then recording it in conjunction with the credit card transaction.

25. Ann Taylor is a corporation that accepts credit cards for the transaction of business.

26. During the one-year period preceding the filing of this Class Action Complaint through the present, Ann Taylor regularly required and recorded personal identification information, in the form of ZIP codes, from cardholders paying for services by credit card.

27. It is and was Ann Taylor's routine business practice to intentionally engage in the conduct described in this cause of action with respect to every person who paid for a purchase from Ann Taylor using a credit card.

28. Due to Ann Taylor's violations as set forth herein, Plaintiff and the Class are entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to California Civil Code section 1747.08(e).

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, requests that the Court enter an order and judgment in her favor and against Ann Taylor as follows:

- 1 (a) Certification of the proposed Class pursuant to Federal Rules of Civil Procedure
2 23(a), (b)(2) and (b)(3);
3 (b) Designation of Plaintiff as representative of the propose Class and designation of
4 Plaintiff's counsel as Class Counsel;
5 (c) Declaration that Defendant's actions, as described herein, violate California Civil
6 Code section 1747.08;
7 (d) Awarding statutory penalties of \$1,000 per violation of California Civil Code
8 section 1747.08;
9 (e) Awarding Plaintiff and the Class their reasonable litigation expenses and
10 attorneys' fees;
11 (f) Awarding Plaintiff and the Class pre- and post-judgment interest; and
12 (g) Granting such other and further relief as the Court deems equitable and just.
13
14

15 Dated: December 1, 2011

Respectfully submitted,

16 AMELIA FOOS, individually and on behalf of all
17 others similarly situated
18

19 By: s/ Todd Atkins
20 One of the Attorneys for Plaintiff and the
Putative Class

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**Pro hac vice* admittance to be sought

Counsel for Plaintiff and the Putative Class

4850-7933-5950, v. 1

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

AMELIA FOOS, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff U.S.
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Todd C. Atkins, Atkins & Davidson, APC, 701 B Street, Suite 1170,
San Diego, CA 92101, 619-255-2380

DEFENDANTS

ANN, INC, d/b/a AnnTaylor Retail, Inc., a Delaware corporation

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV2794 L MDD

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities' Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Agricultural Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(a)(2) 28:1331

Brief description of cause:
Violation of California Song Beverly Credit Card Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/01/2011

s/ Todd Atkins

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____